Continental Satellite Corporation

17320 Carlisle Drive
Tehachapi, CA 93561
TEL: 805-822-6971
FAX: 805-822-4981

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April 26, 1993
In reply ref: 93042604.csc

Ms. Donna Searcy
Secretary
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

Subject: Comments on Notice of Proposed Rule Making
MM Docket No.: 93-25

Dear Ms. Searcy;

We transmit herewith for filing an original and four copies of our Comments concerning the Commission's March 2 Notice of Proposed Rule Making (MM Docket No: 93-25). In addition to this original and four copies, we are also enclosing five extra copies for distribution to the Commissioners.

Also, in order to more efficiently carry out our business operations, we have changed our state of incorporation from California to Nevada. No changes in the net percentages of stock held by the current stock holders were made with this change. The same number of stock holders holding stock in Continental of California also hold stock in Continental of Nevada, and in identical proportions.

Additionally, of course, Continental's DBS satellite construction contract with Space Systems/Loral has been assumed by the Nevada corporation via appropriate board action.

Any questions concerning the within filing may be directed to us at the telephone number and address listed above.

Very truly yours,

For CONTINENTAL SATELLITE CORPORATION

James H. Schollard

James H. Schollard
Chief Executive Officer

enclosure
JHS/pw

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Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Notice of Proposed Rule Making	)	
	)	
Implementation of Section 25 of the Cable Television Consumer Protection and Competition Act of 1992	)	MM Docket No. 93-25
	)	Adopted: February 11, 1993
	)	Released: March 2, 1993
Direct Broadcast Satellite Public Service Obligations	)	

Comments of Continental Satellite Corporation Regarding Notice of Proposed Rule Making (MM Docket No. 93-25)

1. Continental Satellite Corporation (hereafter, "Continental"), by its Chief Executive Officer and by its President, files the within Comments of Continental Satellite Corporation Regarding Notice of Proposed Rule Making (MM Docket No. 93-25) (hereafter, "Comments"). Continental is one of only nine Part 100 high-powered DBS permittees.[1]

1. The "Part 100" DBS licensees are authorized under Part 100 of the Commission's Rules to conduct direct broadcast satellite operations with transponder power output in excess of 100 watts in the Ku-bandwidth between 12.2 and 12.7 GHz. The other eight Part 100 licensees are Advanced Communications Corporation, DirectSat Corporation, Direct Broadcast Satellite Corporation, Dominion Video Satellite, EchoStar, Hughes Communications Galaxy, TEMPO Satellite, and United States Satellite Broadcasting. We describe the Part 100 permittees as "high powered" to contrast them with other FSS operators who have become de facto DBS operators only because their

2. Continental was awarded a Conditional Permit for operation in the Ku-band Direct Broadcast Service in mid-August 1989 and is currently awaiting grant by the Commission of its Application for Unconditional Permit and Launch Authority, along with an accompanying orbital allocation assignment. Continental is contractually prohibited from proceeding to Phase Two of construction of its spacecraft until the Commission grants Continental's Application and awards an allocation assignment for orbital placement of its DBS spacecraft. Continental's Application was filed in August 1990, nearly three years ago.

3. Because all nine Part 100 high-powered DBS permittees will be adversely affected if certain of the proposals set forth in the Commission's Notice of Proposed Rule Making (hereafter, "Notice") are adopted, Continental files the within Comments in order to make fully known to the Commission, to the Congressional lawmakers who oversee the Commission, to DBS industry watchers,

reading of the Notice reveals one of the key, underlying reason why an invitation for public comment became necessary regarding enforcement of Section 25 of the 1992 Cable Act with respect to the Part 100 DBS operators. That underlying reason is this: enforcement of Section 25 obligations to the Part 100 DBS licensees is impractical **at this time** because the Part 100 DBS industry has not yet sufficiently matured to the point where strategic regulatory definitions required to adequately and fairly enforce Section 25 can be crafted. The Commission's Notice is a virtual admission of the confusion inherent within Section 25 of the 1992 Cable Act.

5. Accordingly, in these Comments, Continental argues that the Commission should delay enforcement of Section 25 obligations with respect to Part 100 DBS licensees until all nine permittees who "make it to orbit" have been fully operational for seven years. The Commission has authority "not to adopt regulations at this time but [to] reserve the right to do so in the future if circumstances so warrant" (Notice, Page 12, Appendix A, Section VII of Initial Regulatory Flexibility Analysis). Reservation by the Commission of the right to adopt regulations in the future is fully consistent with our recommendation to delay enforcement of Section 25 obligations for seven years. Enforcement of Section 25 obligations with respect to Part 100 DBS licensees is impractical **at this time** because the Part 100 DBS industry has not yet sufficiently matured.

6. We also propose that at the commencement of the eighth year of on-orbit broadcast operations by the last Part 100 permittee to launch their satellites, the issue of Section 25 en-

forcement might then be re-examined within the context of the traditional public forums operated by the Commission. After suitable re-examination, the Commission should then be in a position to craft the strategic regulatory definitions required to enforce Section 25 of the 1992 Cable Act.

7. In these Comments, Continental also argues that most of the recent regulatory confusion that resulted in release of the Commission's Notice came about only because low-powered C-band (4/6 GHz) and other "non-Part 100" fixed-satellite service (FSS) operators became de facto DBS "licensees" when unanticipated advances in home receiver technology allowed their signals to be intercepted by inexpensive home receivers. Accordingly, Continental recommends in these Comments that the Commission gradually phase out all authority for FSS operators to operate as de facto DBS licensees. We argue that this phase out should become effective at the start of the eighth year of broadcast operations by the final Part 100 permittee to commence satellite broadcasting.

8. Lastly, in these Comments Continental recommends that specialized tax incentivization, including Investment Tax Credits, should be adopted in order to provide financial inducements for investment in the DBS industry. We believe that Congressional provision of ITC's on behalf of those who invest in the Part 100 DBS industry would significantly assist creation of a favorable economic climate needed to sustain long term growth in the DBS industry.

Introductory Comments by Continental Concerning the Commission's March 2 Notice

9. In the Introduction to its Notice (Page 1, Paragraph 1), the Commission observes that Section 25 really requires only three enforcement goals with respect to DBS operators:

- The Commission must impose, at a minimum, the political programming requirements of Section 312(a)(7) and Section 315 of the Communications Act of 1934.
- The Commission must adopt rules governing reservation and availability of channels for noncommercial educational and informational programming at reasonable rates.
- The Commission must examine DBS service obligations in light of "the Commission's long standing goal of service to local communities".

Continental believes the Commission should initially adopt a minimum regulatory climate that will last seven years in order to encourage the nascent business environment needed to ensure survival of the newly-established Part 100 DBS industry.

10. We believe the Commission should adopt the following posture as to enforcing Section 25 toward Part 100 operators:

- First, the Commission should only impose the minimum political programming requirements set forth in Sections 213(a)(7) and 315 of the Communications Act of 1934, as amended. The DBS licensee itself should have enforcement authority to require its broadcast spectrum lessees to meet these obligations if the licensee itself is not actually the net provider of programming

services directly to an end user.

- Second, the Commission should delay adoption of specific carriage obligations governing reservation of channels for noncommercial educational and informational programming until the end of the seven "shake out period" for Part 100 DBS operators in order to allow them to amortize the high capitalization costs of constructing their transmission systems before imposing what amounts to a non-voluntary tax that slashes revenue for certain channels to fifty percent of the net direct cost of DBS channel lease rates for noncommercial educational or informational programming.
- Third, Continental believes that because the very nature of full-CONUS or half-CONUS telecommunication broadcast services tends to exclude the possibility of services tailored to the specific and unique needs of local communities, we suggest that implementation of the Commission's long standing goal of service to local communities will continue to best be met by the terrestrially based cable systems and VHF and UHF television broadcast stations.

Continental envisions that the Part 100 operators will mainly serve national markets for DBS telecommunication services. Local service needs should and must remain with local cable and television broadcast licensees.

11. We also believe that the only exception to leaving the service goals to local communities to be dealt with by the cable and broadcast operators relates to the thorny problem of defining

and excluding the broadcast of legally obscene, pornographic, or objectionable material to specific local communities. We believe we have developed an effective and practical methodology which can exclude, on a community by community basis, broadcast of legally obscene, pornographic, or objectionable material. This methodology (which we present in Paragraphs 71-79 of these Comments), will allow practical enforcement -- literally right down to the ZIP code area of any community -- of The Miller Standard of Broadcast Decency. The Miller Standard has already been adopted by approximately 80% of the individual states as a valid and workable definition of excludable obscene, pornographic, or objectionable material.

Issue Number One Effecting Section 25 Enforcement With Respect to DBS Operators: DBS is Not a Duopoly

12. Two basic issues that appear to have escaped the attention of the Commission in its March 2 Notice bear a significant effect on the relevance of enforcing Section 25 obligations with respect to DBS operators. First, unlike the terrestrial cable television industry, DBS is not an duopoly. Furthermore, the Part 100 DBS operators have no established track record of abuses against consumers such as those committed by the terrestrial cable operators that led to the now-infamous congressional hearings into abusive practices by the cable industry. Everyone knows that these hearings eventually led to passage of the Cable Television Consumer Protection and Competition Act of 1992.

13. Under the theory of cable duopoly, two cable television operators are assigned to each community. In principle, this duopoly is supposed to encourage competitive bidding and an

entrepreneurial business spirit among cable operators. As a result, the community benefits from the "competitive" services.

14. But real life ain't like the movies: this government-imposed duopolistic business structure for terrestrial cable television became a nightmare for end user consumers. In some instances, local communities became de facto investment partners with the cable companies when these communities allowed their franchisees too much laxity in fulfilling the original contractu-

in their community. No local city ordinance would dare try to tax an orbiting satellite. Only the Federal government might have that gall.

17. Third, the Part 100 DBS operators will be exempt from those nasty and exploitive CC&R's that have consistently plagued the Part 25 DBS operators in the past. Local CC&R's that might restrict or even prohibit placement of a ten or twelve foot satellite dish in someone's back yard cannot realistically be enforced with respect to a flat plate, phased array receiver "squarriel" the size of a dinner plate. Local CC&R's that restrict, attempt to tax, or otherwise regulate placement of Part 100 receiver antennas would be just as ineffective and unenforceable as trying to restrict or to impose a tax against the hanging of clocks next to a swimming pool on the outside walls of a residence.

Issue Number Two
Effecting Section 25 Enforcement
With Respect to DBS Operators:
A Premature Regulatory Climate Must be Avoided
With Respect to the Infant DBS Industry

18. In addition to the irrelevance of imposing Section 25 obligations upon a broadcast industry that is not duopolistic and has not yet established a track record of abuses that require Section 25 regulatory considerations, Continental also suggests that there is a second issue that effects the need to impose Section 25 obligations on DBS operators. This second issue is that premature establishment of the regulatory proposals set forth in the Notice will significantly hinder and might possibly even destroy the economic and business viability of what every

DBS industry watcher knows is an extremely delicate, risky entrepreneurial commercial undertaking: i.e., the design, construction, launch, operation, and introduction of an as-yet-unproven high-powered digital broadcast technology to a consumer market already 60% dominated by the American cable television industry.

19. The high-powered DBS industry is subject to regulatory support. Such support is necessary for a variety of reasons:

- First, establishment and operation of level fields of competition in a free economy should be ensured; and,
- Second, control of abuses and unethical practices by operators should be maintained; and,
- Third, encouragement of both the setting as well as the implementation of common points of beginning for the introduction of complex new technologies such as CODECing, encryption standards, home receiver designs, digital audio broadcasting, HDTV, and other technical methodologies for doing information should be provided.

At the same time, however, Continental feels that the DBS industry is too new to require adoption of the stringent safeguards that are so evidently required in the duopolistic American cable industry.

Comments Concerning Limitations on Application of Section 25 to DBS Services Provided in the Ku-band

20. In its Notice, the Commission invited comment concerning its tentative conclusion that Congress intended to limit the scope of Section 25 to DBS services provided in the Ku-band -- i.e., to the Part 100 licensees and not to the Part 25 C-band and Ku-band low powered operators (Notice, Page 2, Paragraph 5).

21. Continental agrees with the Commission's assessment of the original intentions of Congress. However, enforcement of Section 25 obligations **at this time and in the present DBS business climate** only to the Part 100 permittees, which the Commission itself admits are not yet operational[2] -- would provide an unfair competitive business advantage to the Part 25 DBS industry, an industry that has been functional for years without the regulations mandated by Section 25.

22. To propose such blatantly unfair, across-the-board singling out of the high-powered DBS industry for regulation without also including the low-powered DBS industry would not only be discriminatory against the high-powered DBS industry, it would also be destructive to the free market competition that historically constitutes the very basic definition and characteristic of the American free enterprise system. As a practical alternative to selective, discriminatory, and altogether unnecessary enforcement of Section 25 regulations to the as-yet-non-operational high-powered DBS industry, Continental recommends instead that the Commission delay implementation of Section 25 regulations for both low-powered and high-powered DBS operators until seven years after the last of the high-powered DBS licensees has become fully operational.

23. We propose defining the end of the seven year period as the seven year anniversary following acceptance-on-orbit and transfer of title to its attendant DBS licensee of the last high-

2. See Notice, Page 1, Paragraph 3: "Although the Commission has issued 9 construction permits in [the] Part 100 service, none of these permittees has commenced operations."

powered DBS satellite delivered for high-powered broadcast in the Ku-band. At the commencement of the eighth year of full DBS broadcast operations by the last high-powered DBS licensee to launch its satellites, we suggest that the operations of DBS broadcasters could then be examined within the context of a public forum in order to determine where regulations are or are not needed. For the Commission to implement enforcement of restrictive regulations on only one special segment of the DBS industry -- i.e., the high-powered DBS operators -- before that industry is even operational long enough to determine whether regulation is needed or not is both foolhardy and unnecessary.

Comments Concerning Distribution of Programming in the DBS Industry and Its Effect on Section 25 of the 1992 Cable Act

24. In its Notice, the Commission invited comment about the distribution of programming in the DBS industry with respect to how "the practical realities of that distribution process affect

we are proposing will result in the evolution of a natural definition of who the Responsible Parties should be. This definition will naturally follow at the same time that the DBS industry emerges into the mainstream of American telecommunications.

26. Second, regardless of whether the Commission decides to wait the full seven years we propose until the high-powered DBS is firmly established, as a temporary working definition we suggest that the designation of the "Responsible Party" for enforcement of Section 25 of the 1992 Cable act as we described in the question formulated above be set as follows:

> The Responsible Party shall be that business entity which produces the final end-product "consumable signal" for transmission to the customer by the DBS licensee, whether or not that business entity controls the TT&C (Telemetry, Tracking, and Control) of the DBS spacecraft.

As a corollary to this definition, we also propose that in the case of any dispute between a provider of programming and a licensee as to whether or not a particular aspect of the Telecommunications Act of 1934, as amended, is being adhered to or violated by the Responsible Party, the actual DBS licensee should be allowed leeway to define conformity or non-conformity to enforce compliance with the appropriate sections under dispute.

Comments Concerning Ultimate Responsibility Regarding Ensuring that Obligations of Section 25 of the 1992 Cable Act Are Met

27. Continental believes that all DBS licensees (both low-powered C-band as well as high-powered Ku-band) should be held ultimately responsible for ensuring that the obligations inherent upon them pursuant to the entire Telecommunications Act of 1934, as amended (including Section 25 of the 1992 Cable Act) are met.

But we also believe that no licensee should be granted regulatory responsibility without being ensured a corresponding self-regulatory **enforcement** authority. Accordingly, if the Commission intends to require its DBS licensees to ensure that all aspects of the Telecommunications Act of 1934, as amended are met (including Section 25), the Commission must also allow the licensees themselves broad latitude to self-enforce their statutory obligations with respect to the business performance of their lessees.

28. For example, some high-powered DBS licensees are intending to lease DBS Ku-band spectrum to programming providers or producers rather than develop their own programming or distribution channels. This is, of course, a natural and logical development. If a lessee decides to lease the entire DBS allocation of a licensee, and even if as part of that lease the lessee assumes responsibility to pay for the construction, launch of the spacecraft, and day-to-day TT&C of the satellite, we suggest that the licensee can still exercise its regulatory obligations by maintaining appropriate contractual safeguards within its lease contract with the lessee.

29. By requiring the DBS licensee to maintain regulatory responsibility for enforcement of Section 25 obligations and also by giving that licensee the required latitude to ensure that all of its lessees meet those obligations, the Commission's concerns set forth in the Notice (Page 3, Paragraph 9) regarding the "proper interpretation and implementation" of the statutory definitions of "distributor" or "control" will be fully answered.

30. As a practical example of how our proposal could work, we observe that in its Notice (Page 3, Paragraph 11), the Commis-

sion makes specific reference to the lease arrangement now underway between PRIMESTAR Partners LP (hereafter, "Primestar") and GE American Communications (hereafter, "GE"). Under the regulatory and supervision authority that we propose be granted to all DBS licensees (or to de facto DBS licensees such as GE until the gradual phase out of their operational authority proposed by us in these Comments) for their lessees, the actual business entity which would have responsibility to see that Section 25 obligations are met would be GE, because GE is the actual licensee of the satellite.

31. Even if GE were to sub-contract TT&C to another entity, GE would still have regulatory responsibility for all DBS operations that take place through its spacecraft. But under the regulatory scenario we envision, GE would also have authority to require modification of Primestar's programming to fit the obligations of all aspects of the Telecommunications Act of 1934, as amended, not just Section 25 of the 1992 Cable Act. This authority would extend to "pulling the plug" on any programming channel that violates the Rules and Regulations of the Commission.

Comments Concerning Minimum Channel Operations Determinant to Obligations of Section 25 for a Part 25 or a Part 100 Program Distributor

32. In its Notice (Page 3, Paragraph 12), the Commission seeks comment on what considerations should govern the appropriate number of channels operated by a Part 25 programming entity before it becomes subject to Section 25 obligations. The Notice also calls for comments on

> what number of channels can be used to trigger imposition of obligations without risking the economic vi-

> ability of [Part 100 DBS] service providers... (Notice, Page 4, Paragraph 14)

Continental infers that the Commission is really asking for advice as to how it can determine who should have to reserve channels for noncommercial educational and informational programming at "reasonable rates". (We interpret the phrase "reasonable rates" to mean "lease rates discounted 50% from the real cost of operating our DBS system".)

33. We suggest that the Commission adopt a policy of regulatory minimization until the seven year "initial shake out" period is over, at which time performance of DBS operators could be reviewed in order to provide considerations that govern the appropriate number of channels operated by a programming entity before it becomes subject to the obligations of a Part 25 program distributor. In light of the enormous costs inherent in designing, constructing, launching, operation, and marketing of a high-powered DBS system, Continental is not certain that any DBS licensees will be able to afford to give discounts on the lease price of any broadcast spectrum until all capitalization costs are fully amortized. To put it bluntly, we are not convinced yet that debt service can be adequately maintained on the financial obligations necessary to construct a DBS system if FCC regulations require us to give, on a pre-tax and non-tax-deductible basis, what amounts to a fifty percent tax right off the top of the gross lease revenues of certain of our broadcast frequencies.

Comments Concerning the Definition of "DBS Channel"

34. The Commission correctly observes in its Notice (Page 3, Paragraph 13) that skyrocketing advancements in CODECing

technology now make it possible to digitally compress multiple video, audio, and data signals into the broadcast spectrum serviced by a single transponder carried on board a DBS spacecraft. Such CODECing abilities naturally tend to confuse the definition of the broadcast term "channels". We respectfully suggest that the Commission's reconsider its initial definition of "channel" for purposes of triggering Part 25 obligations as an

> explicit number of 24-MHz-wide channels for Part 100 licensees and in terms of the number of transponders and/or some multiple of 30-36 MHz used for video programming by Part 25 DBS providers. (Notice, Page 3, Paragraph 13)

Continental suggests that the Commission replace that definition of the term "DBS channel" with a definition that links the term "channel" not to the bandwidth but to the denominated capacity of the CODECing benchmark used to compress a signal. For example:

> A DBS NTSC channel would be defined as that portion of the CODECed capacity of a 24-MHz Ku-band necessary to digitally convert a standard NTSC video signal, plus that capacity of the Ku-band necessary to carry up to ten stereo audio signals.
>
> A DBS HDTV channel would be defined as that portion of the CODECed capacity of a 24-MHz Ku-band necessary to digitally convert a High Definition Television signal, plus that capacity of the Ku-band necessary to carry up to ten stereo audio signals.
>
> A DBS Digital Audio Broadcasting (DAB) channel would be defined as that portion of the CODECed capacity of a 24-MHz Ku-band necessary to digitally transmit one stereo audio signal.

We have left these definitions purposely open-ended because by doing so, emerging CODECing technologies will have a tendency to enlarge the number of DBS channels that can be carried on a given transponder.

35. Also, since most high-powered DBS licensees have pro-

posed differing transponder wattages, it is highly probable that each licensee will be able to carry different numbers of channels on each transponder. By letting the CODECing scheme adopted by the licensee determine the net number of television signal channels that can be carried by each transponder, the number of channels upon which to calculate Part 25 obligatory requirements should follow as a matter of course.

36. We have added to both NTSC and HDTV CODECed transponder capacity requirements that additional portion of the Ku-band necessary to add up to ten stereo audio channels to a standard NTSC or HDTV signal. We have added the ten stereo audio channel capacity in order to allow a broadcaster to supplement a default audio signal with multiple language dubbing capability. For example, a broadcaster could provide English, Spanish, French, German, Japanese, and Korean language capacity and still have additional channels reserved for other usages within the channel.

Comments Concerning Potential Expansion of Fixed-Satellite Home Video Service Offered in the Ku-band and C-band

37. The Commission requests comment concerning the potential expansion of fixed-satellite home video services offered in the Ku-band (Notice, Page 4, Paragraph 15). We will also include in our comments regarding this subject our observations concerning home video services offered in the C-band. Continental notes that the Commission never originally envisioned that FSS operations would be utilized for DBS home video service broadcast applications in either C-band or Ku-band.

38. All industry observers know from their studies of the

historical and technological developments behind the emergence of the American direct broadcast industry that the fixed-satellite service was originally designed only to allow media distributors to transmit their signals from their main production studios directly to their terrestrial cable or broadcast affiliates. That broadcast signals distributed via the fixed-satellite services were never intended to be intercepted by the home consumer was insured by the high capital cost of satellite signal down converters and receiver dishes whose diameters were originally measured in meters, not inches.

39. Then the technology revolution brought the price of a satellite receiver system down to earth. Home video consumers were enabled to purchase equipment that could take FSS signals off the air before they were delivered to terrestrially based cable or broadcast outlets. The result: fixed-satellite operators became de facto DBS operators, even though they were not operating with 100+ watt transponders, and even though most are not operating in the Ku-band. Almost overnight the program distributors had to develop elaborate encryption schemes in order capitalize on these "video pirates".

40. FSS and DBS industry participants and watchers all know that the "real" DBS permittees (i.e., the Part 100 operators) were originally licensed as part of a realistic acknowledgement by the Commission that FSS services are simply not equipped to serve as DBS operators in the long run.

41. Continental proposes that the Commission gradually phase out authorization of FSS operators to provide de facto DBS services by the end of the seven year "shake out period" proposed

by these Comments and then at that time require FSS operators to restrict utilization of their services to those applications to which the FSS was originally assigned. The "Gang of Nine" Part 100 DBS permittees should be allowed to let their services fully utilize the Ku-band broadcast spectrum assigned to them, without interference from C-band and Ku-band FSS operators.

42. To sum up, Continental suggests that expansion of fixed-satellite home video services offered by C-band and Ku-band operators who are not Part 100 permittees be prohibited starting in the eighth year following delivery-on-orbit of the last of the initial DBS spacecraft launched by the last Part 100 permittee to commence DBS transmissions from its assigned orbital allocation.

Comments Concerning the Effect that a DBS Licensee Operating as a Common Carrier Could Have on Section 25 Obligations

43. The Commission has requested comment concerning what effect a satellite licensee's operation as a common carrier might have on the application of obligations imposed pursuant to Section 25 (Notice, Page 4, Paragraph 16). Continental believes that this concern is adequately answered by constructing a definition for purposes of enforcement of Section 25 for exactly who the Responsible Party should be. Accordingly, we reiterate our suggestion that implementation of Section 25 regulations be delayed for seven years so an adequate formula for identifying the Responsible Party can be developed.

44. The definition of "Responsible Party" will naturally follow at the same time that the DBS industry emerges into the mainstream of American telecommunications. As a working defini-

tion, we also reiterate our suggestion that the Responsible Party be defined as that business entity which produces the final end-product "consumable signal" for transmission to the customer by the DBS licensee, whether or not that business entity controls the TT&C (Telemetry, Tracking, and Control) of the DBS spacecraft. The DBS licensee should be allowed broad latitude to enforce Section 25 obligations on the part of the Responsible Party, if that DBS licensee is itself not the Responsible Party.

Comments Concerning the Enforcement Mechanisms for Business Entities Who Are Not Licensees

45. In its Notice (Page 4, Paragraph 17), the Commission requested comment regarding confusion inherent in the definition references to Part 25 licenses with respect to distributors who must hold the license. The Commission appears to wish to interpret the confusing language to mean that Section 25 obligations rest with the distributor and not with the satellite licensee.

46. We believe the most effective solution to the regulatory conundrum is to reiterate our proposal that in the case of any dispute between a provider of programming and a licensee as to whether or not a particular aspect of the Telecommunications Act of 1934, as amended, is being adhered to or violated by the Responsible Party, the actual DBS licensee should be allowed leeway to define conformity or non-conformity to enforce compliance with the appropriate sections under dispute.

47. All DBS licensees should be held ultimately responsible for ensuring that the obligations inherent upon them pursuant to Section 25 are met. But we also believe that no licensee should be granted regulatory responsibility without being ensured a

corresponding self-regulatory enforcement authority. Therefore

Commission elects to implement our suggestion to gradually phase out DBS authority by Part 25 operators no later than the commencement of the eighth year of Part 100 DBS broadcasting, the issue will become moot. That's because under the scenario we envision, no Part 25 operators will be using their spacecraft for DBS operations after about 2005. Most satellite watchers realize that many of the spacecraft operated by Part 25 licensees will reach the end of their useful lives by the year 2005 anyway.

51. We suggest that the most practical way for the Commission to phase out DBS operations by Part 25 licensees is to link grant of launch authorities for their replacement spacecraft to a commitment on the part of FSS operators not to allow their satellites to be used for DBS operations in the C-band or Ku-band. In the alternative, the Commission might let permission for FSS operators to utilize their spacecraft for DBS operations lapse naturally at the end of the useful orbital lives of the FSS spacecraft now in service.

Comments Concerning Applicability of Subsection 25(a) Programming Requirements to Common Carrier Licensees

52. With respect to Section 25 of the 1992 Cable Act, in its Notice the Commission invited comments concerning:

> how and whether the programming requirements we ultimately adopt pursuant to subsection 25(a) can, as a practical matter, be applied to common carrier licensees or to programmer distributors" (Notice, Page 5, Paragraph 19).

Comments concerning "possible enforcement mechanisms" were also invited. As we noted earlier in these Comments, we believe that requiring the DBS licensee to maintain regulatory responsibility

for enforcement of Section 25 obligations is the only real solution to the problem, **provided** that the Commission also gives the licensee the required latitude to ensure that all of its lessees meet those obligations.

53. To mention again the example of Primestar's contract with GE, under the scenario we envision the "DBS" entity which should have responsibility to see that Section 25 obligations are met would be GE, not Primestar, because GE is the actual "DBS" licensee of the satellite.[3] However, under the regulatory scenario we have described, GE should also have authority to require modification of Primestar's programming to fit the obligations of Section 25, including even "pulling the plug" on any programming channel that violates the Rules and Regulations of the Commission.

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3. We omit from discussion of this illustration the larger question as to whether or not **any** C-band or Ku-band satellite operator who is not one of the Part 100 DBS operators should be allowed by the Commission to remain in the de facto DBS business past the end of the seven-year "shake out period" that we propose be adopted for the purposes of commencing enforcement of Section 25 regulations. As noted earlier in these Comments, we believe that offering home video services by C-band and Ku-band operators who are not Part 100 permittees should be prohibited starting in the eighth year following delivery-on-orbit of the last of the initial DBS spacecraft launched by the last Part 100 permittee to commence DBS transmissions from its assigned orbital allocation. We believe that implementation of this prohibition when all "real DBS" licensees (i.e., the Part 100 permittees) finally become operational is proper because FSS was never intended by the Commission or by Congress to serve as DBS operators when it was first created to serve the American people.